

# Exhibit B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**RUTH SMITH**, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

**SUNPATH, LTD.**, a Massachusetts corporation,

Defendant.

Case No. 1:22-cv-00081-LMB-WEF

**DECLARATION OF PATRICK H. PELUSO**

I, Patrick H. Peluso, declare as follows:

1. I am an attorney with the law firm Woodrow & Peluso, LLC and counsel of record for Plaintiff Ruth Smith (“Plaintiff” or “Smith”).

2. On January 26, 2022, Plaintiff filed the instant action alleging wide-scale violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA” or “Act”) and the Virginia Telephone Privacy Protection Act (“VTPPA”).

3. On November 9, 2022, American Protection disclosed at its deposition that it utilized Five9’s dialing software to place calls during the relevant time period.

4. On November 9, 2022, Plaintiff issued a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action directed to Five9, Inc. Among other things, the subpoena sought the call records, which would reflect the calls placed to Plaintiff and the class, and documents reflecting the functionality of the dialing system.

5. On November 30, 2022, at 6:17 p.m. MT, Five9 produced the call records reflecting all of the calls placed to Plaintiff and the proposed class. The records reveal millions of

calls placed by SunPath's third party marketer, American Protection.

6. Roughly two hours later, Plaintiff produced the Five9 call records to SunPath.

7. Plaintiff's counsel discussed the Five9 call records with SunPath's counsel shortly after their production, including discussing their applicability to class certification as well as the calls at issue to Plaintiff.

8. On December 2, 2022, Plaintiff Smith testified during a full day deposition taken by SunPath.

9. The Five9 subpoena was the only subpoena in this action directed to a telephone service provider that sought call records.

10. Plaintiff also issued subpoenas to AT&T Wireless, LLC, Peerless Network, Inc., Lumen Technologies, Inc., and Verizon Communications, Inc. All of these subpoenas sought to identify the end user of certain telephone numbers after American Protection falsely claimed that it didn't place the calls at issue.

11. Five9 provided the custodial declaration to attempt to avoid the burden of having to appear as a witness in this trial solely to authenticate the call records.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 25, 2023, in Denver, Colorado.

By: /s/ Patrick H. Peluso

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